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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130103002-3396-02]

RIN 0648-BC85

Fisheries of the Northeastern United States; Final 2013-2015 Spiny Dogfish Fishery Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This rule implements specifications and management measures for the spiny dogfish fishery for the 2013-2015 fishing years consistent with the recommendations of the Mid-Atlantic and New England Fishery Management Councils. The approved commercial quotas represent increases over status quo levels, and the possession limit is also increased. The action is expected to result in positive economic impacts for the spiny dogfish fishery while maintaining the conservation objectives of the Spiny Dogfish Fishery Management Plan.

DATES: This rule is effective May 1, 2013. The specifications under “Final 2013-2015 Specifications” in the preamble are effective May 1, 2013, through April 30, 2016.

ADDRESSES: Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover,

DE 19901. The specifications document is also accessible via the Internet at:

<http://www.nero.noaa.gov>.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, 55 Great Republic Drive, Gloucester, MA 01930–2276, and are also available via the internet at <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281-9273; fax: (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

Spiny dogfish (*Squalus acanthias*) were declared overfished by NMFS in 1998. Consequently, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) required NMFS to implement measures to end overfishing and rebuild the spiny dogfish stock. The Mid-Atlantic Fishery Management Council (MAFMC) and the New England Fishery Management Council (NEFMC) developed a joint fishery management plan (FMP) that was implemented in 2000. As a result of the conservation measures in the FMP, the spiny dogfish stock was declared to be successfully rebuilt in 2010.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the process for specifying an annual catch limit (ACL), commercial quota, possession limit, and other management measures for a period of 1–5 years. The MAFMC’s Scientific and Statistical Committee (SSC) reviews the best available information on the status of the spiny dogfish population and recommends acceptable biological catch (ABC) levels. This

recommendation is then used as the basis for catch limits and other management measures developed by the MAFMC's Spiny Dogfish Monitoring Committee and Joint Spiny Dogfish Committee (which includes members of the NEFMC). The MAFMC and NEFMC then review the recommendations of the committees and make their specification recommendations to NMFS. NMFS reviews those recommendations, and may modify them if necessary, to ensure that they are consistent with the FMP and other applicable law. NMFS then publishes proposed measures for public comment. NMFS proposed the specifications set here in the Federal Register on March 12, 2013 (78 FR 15674), with a 15-day public comment period. NMFS received one comment, which is addressed below.

A detailed description of how the 2013-2015 spiny dogfish ABC and associated specification measures were derived, and the range of alternatives analyzed, is provided in the proposed rule and in its supplementary materials (see ADDRESSES), and is not repeated here. The final approved specifications for the 2013-2015 spiny dogfish fishery are described below.

Final 2013-2015 Specifications

The final ACLs and commercial quotas for fishing years 2013-2015 are shown in Table 1. The commercial quotas represent 14-17-percent increases from the status quo commercial quota (35.694 million lb (16,191 mt)).

The spiny dogfish possession limit is increased from 3,000 lb (1,361 kg) to 4,000 lb (1,814 kg) per trip in each year (Table 1). The possession limit increase is projected to help increase trip level revenues, and reduce the potential for under-harvesting the available quota. The Commission has adopted identical management measures in state waters for 2013.

Table 1. Summary of final spiny dogfish ACLs, commercial quotas, and possession limits for the 2013-2015 fishing years.

Year	ACL		Commercial Quota		Possession Limit	
	M lb	mt	M lb	mt	lb	kg
2013	54.295	24,628	40.842	18,526	4,000	1,814
2014	55.277	25,073	41.784	18,953	4,000	1,814
2015	55.063	24,976	41.578	18,859	4,000	1,814

As currently specified in the FMP, quota period 1 (May 1 through October 31) will be allocated 57.9 percent of the commercial quota, and quota period 2 (November 1 through April 30) will be allocated 42.1 percent of the commercial quota. However, the Councils have approved Amendment 3 to the FMP, which would eliminate the seasonal allocation of the commercial quota. Upon implementation of Amendment 3 (which has not yet been submitted to NMFS, but is expected early in the 2013 fishing year), if approved, the commercial quota would only be monitored on an annual, coastwide basis, thereby reducing potential conflicts with the Commission's management of spiny dogfish.

#### Comments and Responses

NMFS received one comment on the proposed specifications, summarized below.

Comment 1: One public commenter argued that the proposed specifications are based upon inaccurate science, and suggested that the quotas should be reduced by 50 percent. No justification was provided for this reduction.

Response: NMFS disagrees that such a reduction in spiny dogfish harvest levels is necessary at this time. Spiny dogfish spawning stock biomass has been increasing in recent years, and is currently above target levels. The increase in quota is supported by the best available scientific information and follows the ABC and specification process defined in the FMP.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This action has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

The Assistant Administrator for Fisheries, NOAA, has determined that there is good cause to waive the 30-day delayed effectiveness provision of the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d)(3). This rule imposes no new requirements or burdens on the public, therefore, the public need not take any steps to comply with this rule. In addition, the delay would be contrary to the public interest because the rule provides economic benefits to fishery participants by increasing the spiny dogfish possession limit, without resulting in overfishing. Failure to make this final rule effective at the start of the fishing year will undermine the intent of the rule, which is to promote the optimal utilization and conservation of the spiny dogfish resource. For these reasons, the 30-day delay is waived and this rule will become effective on May 1, 2013.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) in support of this action. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, relevant analyses contained in the action and its EA, and a summary of the analyses completed to support the action in this rule. A copy of the analyses done in the action and EA are available from the Council (see ADDRESSES). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and

the legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

One comment was received on the proposed rule. For a summary of the comment, and NMFS's response to it, see the Comments and Responses section above. The comment did not raise any issues or concerns related to the IRFA, and no changes were made to the rule as a result of the comment.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The increases in the spiny dogfish commercial quotas would impact vessels that hold Federal open access commercial spiny dogfish permits, and participate in the spiny dogfish fishery. According to MAFMC's analysis, 2,743 vessels were issued spiny dogfish permits in 2011. However, only 326 vessels landed any amount of spiny dogfish. While the fishery extends from Maine to North Carolina, most active vessels were from Massachusetts (31.6 percent), New Jersey (14.7 percent), New Hampshire (11.4 percent), Rhode Island (9.8 percent), New York (8.0 percent), North Carolina (6.7 percent), and Virginia (5.8 percent).

All of the fishing vessels affected by this action are considered small entities under the SBA size standards for small fishing businesses. Although multiple vessels may be owned by a single owner, ownership tracking is not readily available to reliably ascertain affiliated entities. Therefore, for the purposes of this analysis, each permitted vessel is treated as a single small entity and is determined to be a small entity under the RFA.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This rule does not duplicate, overlap, or conflict with other Federal rules.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

The purpose of this action is to increase spiny dogfish catch limits and landings, consistent with the best available science, thereby extending the duration of the fishing season and increasing revenue relative to the status quo. The action is expected to maximize the profitability for the spiny dogfish fishery during the 2013-2015 fishing years, without jeopardizing the long-term sustainability of the stock. Therefore, the economic impacts resulting from the action are expected to be positive, and there were no other alternatives considered that could have further increased the economic yield from the fishery while remaining consistent with the Magnuson-Stevens Act and the goals of the FMP.

Four management alternatives were analyzed for each year, 2013-2015. Alternative 1 represents the preferred alternative implemented by this rule (Table 1). Alternative 2 included the same commercial quotas as Alternative 1, but would have maintained the status quo possession limit of 3,000 lb (1,361 kg), rather than increasing it to 4,000 lb (1,814 kg). This alternative was rejected because there was no biological basis for rejecting the increased possession limit, which is expected to have positive economic and social benefits. Alternative 3 would have increased the possession limit to 4,000 lb (1,814 kg), and included the highest possible commercial quotas by not making a deduction from the ACL accounting for management uncertainty (estimated to be 3.99 percent of the ACL). Under Alternative 3, the commercial quotas would have been 42.539 million lb (19,295 mt) in 2013, 43.520 million lb (19,740 mt) in 2014, and 43.307 million lb (19,644 mt) in 2015; however, not accounting for

management uncertainty would have increased the risk of exceeding the ACL, and would be inconsistent with the FMP; therefore, this alternative was also rejected. Alternative 4 represents the status quo alternative, which would have maintained fishing year 2012 specifications through 2015 (35.694 million-lb (16,191-mt) commercial quota; 3,000-lb (1,361-kg) possession limit). Alternative 4 was rejected because maintaining the lower, status quo quota would not allow the fishery to achieve optimum yield during 2013, 2014, and 2015.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the spiny dogfish fishery. The guide and this final rule will be available upon request, and posted on the Northeast Regional Office’s website at [www.nero.noaa.gov](http://www.nero.noaa.gov).



List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 29, 2013

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Alan D. Risenhoover,  
Director, Office of Sustainable Fisheries,  
performing the functions and duties of the  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.235, revise introductory text to paragraphs (a) and (b), and revise paragraphs (a)(1), and (b)(1) to read as follows:

§ 648.235 Spiny dogfish possession and landing restrictions.

(a) Quota period 1. From May 1 through October 31, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 4,000 lb (1.814 mt) of spiny dogfish per trip; and

\* \* \* \* \*

(b) Quota period 2. From November 1 through April 30, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 4,000 lb (1.814 mt) of spiny dogfish per trip; and

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